

# FINAL BILL REPORT

## ESHB 2928

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### PARTIAL VETO

C 69 L 92

**Brief Description:** Modifying open space laws.

By House Committee on Revenue (originally sponsored by Representatives Fraser, Wynne, Belcher, Morris, Wang, Dellwo, Scott and Jones).

House Committee on Revenue  
Senate Committee on Ways & Means

**Background:** Property meeting certain conditions may have property taxes determined on current use values rather than market values. There are five categories of lands that may be classified and assessed on current use. Three categories are covered in the open space law: open space lands, farm and agriculture lands, and timber lands; and two are in the timber tax law: classified and designated forest land.

Open space land is land that preserves natural or scenic resources, protects streams or water supplies, promotes conservation of soils, wetlands, beaches or tidal marshes, enhances neighboring parks, forest, wildlife preserves, nature reservations or sanctuaries, enhances recreation opportunities, preserves historic sites, and retains land in urban areas in its natural state. The legislative body granting open space classification may require the land be open to public use.

Farm and agricultural land is land devoted primarily to commercial agricultural purposes. To qualify for classification, farm parcels less than five acres must generate \$1,000 in farm gross income. Farm parcels less than 20 acres and greater than five acres must have income greater than \$100 per acre. Farm parcels greater than 20 acres have no income test.

Application for farm and agricultural classification is made to the county assessor. A denial by the assessor can be appealed to the county legislative authority. Applications for open space or timber land are made to the county legislative authority. Appeals of county legislative authority decisions are made to the superior court.

Timber land is land of five or more acres devoted primarily to the growing and harvesting of timber. Classified and

designated forest land is land which is 20 or more acres in size and devoted primarily to the growing and harvesting of timber. The assessed value of timber land and classified and designated forest land is set by statute.

Property may be removed from classification by the owner giving notice to withdraw. In the case of lands classified under the open space law, this notification is irrevocable. Land is removed from classification by the assessor if it no longer is used for the purpose under which it was granted open space classification.

When property is removed from classification, back taxes plus interest must be paid. For open space categories back taxes represent the tax benefit received over the most recent seven years. In addition, a penalty equal to 20 percent of the back taxes is applied. The penalty may be avoided if the property remains in the program for at least 10 years and a two year waiting period after notice of withdrawal is satisfied. For classified and designated forest land, back taxes are equal to the tax benefit in the most recent year times the number of years in the program, but not more than 10.

Land may be transferred between farm and agricultural land, timber land, classified and designated forest land without paying back taxes. Land may not be transferred into the open space category from another current use category without the payment of back taxes.

Sale or transfer to a new owner triggers removal from classification. Back taxes must be paid unless the new owner signs an agreement to continue in the program. Back taxes are not imposed if the property is transferred through exercise of eminent domain or the threat of eminent domain.

Transfers by inheritance have traditionally not been treated as a transfer triggering removal from the program. A recent attorney general opinion, however, makes it clear that an inheritance is a transfer. Unless the new owner signs a continuance, the property is removed from the program. An exemption from the back taxes is provided for a transfer within two years of the death of an owner of at least 50 percent interest in the property.

**Summary:** The definition of open space is expanded to include any land area which will preserve visual quality along highways, roads, and street corridors or scenic vistas. Public access cannot be required as a condition of granting open space classification to wetlands.

A new category is created in the open space category called "farm and agriculture conservation land." Lands eligible for this category are those formerly classified as farm and agriculture lands that no longer meet the income test or are not being actively farmed. Traditional farmland that has not been devoted to a use inconsistent with agricultural uses, that is not in another current use classification, and has a high potential for returning to commercial agriculture is also eligible for this category.

Transfers without payment of back taxes can be made between all categories of current use valuation except for transfers out of open space. However, land classified as farm and agricultural conservation land within open space may be transferred to the farm and agricultural land category.

The annual gross income test for farm and agricultural land is increased for farms five to 20 acres in size from \$100 to \$200 per acre. The annual gross income test is increased for farms less than five acres in size from \$1,000 to \$1,500. These changes in income test are effective for applications after January 1, 1993. Land previously classified as farm and agricultural land will retain old income tests. A transfer of classified farm land to a new owner will trigger application of the higher income tests.

The current allowance for farm woodlots is expanded to an allowance of up to 20 percent of the farm land for uses incidental to agricultural purposes. Wetlands preservation is considered to be an incidental use compatible with agricultural purposes.

Land under farm dwellings is assessed at farmland values. This treatment applies only to farms over 20 acres and when use of the dwelling is integral to farm operation. The current use value of land under farm dwellings is set at the average farm and agricultural land value plus the value of land improvements for septic, water, and power to serve the residence. Back taxes are not charged when land under farm dwellings is removed from special assessment.

The definition of agriculture is expanded to include other activities as established by Department of Revenue rule following consultation with a statewide advisory committee. An advisory committee is created with membership as follows:

- (1) Four assessors, two from Western Washington and two from Eastern Washington;
- (2) Two members representing natural resource protection organizations;
- (3) Two members representing the public; and
- (4) Four members representing agriculture and forestry.

A timber management plan is required for classification as timber land.

Land classified under the open space or the timber tax laws retain their classification when a transfer occurs due to an inheritance. The exemption from the collection of back taxes when property is sold within two years of the death of an owner of at least 50 percent interest in the property is removed.

Numerous technical changes are made to the open space property tax law. Denials by assessor of applications for farm and agricultural land classification are appealed to the county board of equalization rather than the county legislative authority. Continued open space classification is allowed if the land is transferred due to a loan default to a government agency and the agency intends to resell the property to be continued in the same use. Property classified under open space law is required to continue to meet criteria for classification as open space for the years following initial classification. Provisions relating to application of the 20 percent penalty in addition to back taxes are clarified. The intent to use power of eminent domain must be stated in writing or other official action taken before back taxes may be forgiven.

An assessor may reclassify land if it was incorrectly placed in the wrong classification. This authority expires on December 31, 1995.

***Votes on Final Passage:***

House	97	1	
Senate	48	0	(Senate amended)
House	96	0	(House concurred)

***Effective:*** January 1, 1993

***Partial Veto Summary:*** The section creating an advisory committee on open space property tax administrative rules is vetoed (See VETO MESSAGE).